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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 191

GERALDINE SNELL, MIRIAM RAMOS and JUAN MALAVE, Individually and on Behalf of Their Minor Children, and on Behalf of All Other Parents of Needy, Dependent Children, and ROBERT WHALEY, and HELEN MARLEY, Individually and on Behalf of All Others Similarly Situated,

Appellants,

—v.—

GEORGE K. WYMAN, as Commissioner, New York State Department of Social Services; MITCHELL GINSBERG, as Commissioner, New York City Department of Social Services,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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Appellants,

—v.—

GEORGE K. WYMAN, as Commissioner, New York State Department of Social Services; MITCHELL GINSBERG, as Commissioner, New York City Department of Social Services,

Appellees.

JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the United States District Court for the Southern District of New York. The three-judge court (C. J. Kaufman dissenting) dismissed appellants' suit for a declaratory judgment and injunctive relief restraining enforcement of certain statutes and regulations which impose repayment obligations upon recipients of cash assistance in New York State.

Appellants submit this Statement to show that the Supreme Court has jurisdiction of the appeal and that the

appeal presents a substantial question for determination by this Court.

Opinion Below

The opinion of the District Court is unreported. It is set out in the Appendix to this Jurisdictional Statement at pp. 14 to 43.

Jurisdiction

This appeal is taken pursuant to Title 28 of the United States Code, Section 1253.

Appellants filed their original complaint in this cause under Title 28 U. S. C. Sections 1331(a), 1343(3) and (4), 2201 and 2202 and Title 42 U. S. C. Section 1983 in the Southern District on July 13, 1967. On August 2, 1967, Judge Marvin E. Frankel granted appellants' motion for the convening of a three-judge court. On February 29, 1968, the Court issued its opinion dismissing the complaint. Judgment thereon was entered March 15, 1968 (A13).*

Appellants filed their notice of appeal to this court in the Southern District of New York on April 11, 1968. The jurisdiction of the Supreme Court to review by direct appeal pursuant to 28 U. S. C. Section 1253 a decision of a three-judge district court has been sustained by the following decisions:

United States v. *Georgia Public Service Commission*, 371 U. S. 285, 287 (1962);
American Federation of Labor v. *Watson*, 327 U. S. 582, 591 (1945).

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* Page references to the Appendix to the Jurisdictional Statement are prefixed by the letter A. R. refers to the Record on Appeal.

Statutes and Regulations Involved

Sections 104, 104a, 105, and 360, Social Services Law, Cons. Laws of New York Ann. are the statutes and Title 18, Sections 368.2 and 369.2 Regulations of New York State Department of Social Services, promulgated pursuant to said statutes, are the regulations involved in this appeal. The statutes and regulations (hereinafter sometimes collectively referred to as the "*recovery provisions*") are set out in the Appendix at pp. 54 to 63 *et seq.*

Questions Presented

1. Whether the New York State recovery provisions as construed and applied are invalid under the Supremacy Clause of Article VI of the United States Constitution because they conflict with the purposes and intent of the Social Security Act, Title 42 U. S. C. Sections 601 and 1351, the Aid to Families of Dependent Children ("AFDC") and Aid to the Permanently and Totally Disabled ("APTD") program, respectively; and

2. Whether the New York State recovery provisions as construed and applied arbitrarily, unreasonably and discriminatorily deprive welfare recipients of liberty and property and deny them the due process and equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Statement of the Case

The material facts involved in this appeal are not in dispute. 32 states have regulations and statutes similar to those being attacked here (A26).

The New York recovery provisions create an "implied contract" (Section 104) to repay the cost of cash grants, but not medical assistance, together with the costs of distribution under all of the state's relief programs, including AFDC and APTD, and further impose upon recipients the obligation to reimburse the state out of specified kinds of assets, whether or not immediately available to the client. These include: damages for personal injuries (Section 104A), life insurance benefits (Section 105) and realty (Section 360) (R. 273-274). Except in fraud situations recovery is not sought from employment earnings (R. 635).

An applicant for cash assistance must be entirely without assets or if otherwise eligible because of need must assign to the local Welfare Department all assets, even those of minimal value, as a prerequisite to receipt of assistance (R. 481). In most cases, destitution is an ongoing condition for continued receipt of assistance and reliefers who maintain bank accounts subject themselves to fraud penalties. The Department will seek repayment in such situations even from estates otherwise payable to surviving, minor children (R. 482-3).

Welfare Department attorneys pursue monies in civil actions based on assignments as well as the "implied contract" theory. Though all recipients are made aware of the repayment obligation (R. 512-513), for 1966 total state recoveries amounted to less than one half of one percent of expenditures for assistance (R. 224) and over one half of

recovery situations were attributable to the Old Age Assistance program.

Though the state permits exemptions equalling a one-year budget allowance ordinarily and the equivalent of a two-year allowance in personal injury cases, the recovery provisions as construed and applied admittedly do not take cognizance of the fact that, after repayment, the recipient or former recipient may return to the rolls (R. 500). Recovery is sought, not only from those *able* to pay, but from all those with property *available* for repayment (R. 674). Though the federal statute permits (42 U. S. C. 602(a)(7)(B)) New York will not allow an AFDC mother, with assets, to avoid the recovery provisions by placing them in a trust fund for the education of her children (R. 597-599).

Appellants are current or former welfare recipients under the AFDC, APTD, or in the case of appellant Marley, under the non-categorical, locally financed Home Relief program. All are low-income persons with little or no savings (R. 629-632).

Geraldine Snell is divorced, has four children, works part-time, and expects to complete college in 1969. Pursuant to Sections 104 and 360, the state required appellant Snell as a pre-condition to receipt of assistance, to assign an equitable interest (R. 275-277, 279-280) worth about $900, in a cooperative apartment.

Miriam Ramos, Juan Malave and Robert Whaley were compelled, pursuant to Sections 104 and 104A to execute assignments of personal injury claims. Appellant Ramos is the mother of three children, all under four years of age. Her husband is in jail. Appellant Malave is the employed

father of eight children. He received AFDC for a brief period in 1967 when unable to work because of an accident. Appellant Whaley became a recipient after losing his leg in a mishap. Prior thereto he earned a living as a free-lance photographer and hopes to resume that career (R. 277-381).

Appellant Marley, a sixty-eight year old chambermaid, received assistance while ill with cancer from 1945 to 1954 and during that time assigned, pursuant to Section 104 and to the predecessor statute to Section 105, the benefits of a life insurance policy on her life. The state refuses to release to her benefits in the amount of $485 from the policy which has been paid-up since 1966 (R. 295-298).

Appellants adduced uncontroverted testimony from social work experts Dr. Charles Grosser and Barbara Lounds that the recovery provisions effectively negate rehabilitative objectives of the Social Security Act generally by depressing ambition and compounding the sense of dependency (R. 532-545, 689-709). Dr. Grosser testified that though the Act is generally consistent with social work goals and since its inception members of his profession have been involved in its administration "any social work purpose in the recovery provisions is quite beyond my comprehension" (R. 533).

Former Welfare Commissioner Mitchell Ginsberg testified, that the recovery provisions are grounded primarily in economy considerations and not in social work considerations. They relate, he said solely to "money," for reimbursing the public for the cost of assistance rendered (R. 500-501).

Judge Frankel, writing for the District Court majority, found that the recovery provisions "do not approach the

showing of irrationality or arbitrariness warranting exercise of the limited veto power of the federal judiciary under the Fourteenth Amendment" (R. 639); nor, said Judge Frankel, do the provisions conflict with federal statutory policy so as to violate the Supremacy Clause (R. 652-655).

Judge Kaufman, dissenting, would have found that the provisions in failing to meet the test of "minimal rationality" deprived recipients of liberty guaranteed by the Fourteenth Amendment (R. 667). Said Judge Kaufman, "by reason of the seriousness of the personal interest involved, the inelegance of the scheme designed, the ease of correcting it by more discriminating methods, and the insubstantiality of the interest served, the State of New York has not acted with adequate precision." (R. 666.)

The Questions Are Substantial

The questions presented on this appeal are plainly substantial under governing decision of this Court.

1. *The Recovery Provisions Violate the Supremacy Clause*

Congress intended in enacting the public assistance titles of the Social Security Act that AFDC monies be used to "help maintain and strengthen family life" and to assist adult recipients to "attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection" (42 U. S. C. 601).

APTD benefits are for the purpose of helping disabled recipients "attain or retain capability for self-support or self-care" (42 U. S. C. 1351).

The record shows that the recovery provisions bear no relation to the humane purposes of the Act or to benefits levels (R. 447) and, in fact, are designed to reduce the state's welfare costs. This is a consideration that cannot justify state action which deprives citizens of constitutional rights, *Edwards* v. *California,* 314 U. S. 160 (1941). Whereas in *Edwards* in attempting to prevent paupers from entering the state California interfered with a citizen's right to travel, the recovery provisions deprive welfare recipients of a more basic right to become independent and self-supporting with the aid of cash assistance.

But, most important, the uncontroverted evidence in the record also shows that the provisions frustrate the rehabilitative objectives *inter alia* by deterring needy eligibles from applying (R. 337, 340), by requiring destitution as a condition of assistance, by depressing the ambitions of those on rolls, by discouraging low-income males from entering into marriage with AFDC mothers, and by facilitating the return to the relief rolls of former recipients who acquire assets (R. 631-632).

Unlike the welfare residency requirements presented to this court in *Shapiro* v. *Thompson,* 270 F. Supp. 331 (D. Conn. 1967), the recovery provisions are not explicitly authorized by any portion of the Social Security Act (cf. 42 U. S. C. Sections 603 and 1353). Instead, the available legislative history strongly indicates that Congress intended to restrict recoveries to fraud situations. Report No. 65, House Ways and Means Committee (p. 17); Report No. 628 of the Senate Finance Committee, 74th Cong. First. Sess. (1935). *City of Worcester* v. *Quinn,* 304 Mass. 276 (1939).

The Social Security Act must also be read in the light of the common law rule in most of the states, including New York, and in England that welfare payments normally could not be recovered. *Charlestown* v. *Hubbard*, 9 N. H. 195 (1938); *City of Albany* v. *McNamara*, 117 N. Y. 168 (1889); *Guardians of Pontypridd Union* v. *Drew*, 1 K. B. 214 (1927).

Accordingly, the recovery provisions conflict with the Social Security Act and palpably infringe its policy, *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766 (1945). The repugnance is so direct and positive that the two bodies of law cannot be reconciled or consistently stand together, *Kelly* v. *Washington*, 302 U. S. 1, 10 (1937); thus, regardless of possible other constitutional defects, the provisions violate the Supremacy Clause. *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520, 529 (1959).

2. *The Recovery Provisions Deny Recipients the Equal Protection of the Laws*

The test that the court has employed under the Equal Protection Clause is "whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination." *Loving* v. *Virginia*, 388 U. S. 1, 10 (1967); *Levy* v. *Louisiana*, 36 U. S. L. W. 4458 (May 20, 1968). See also *McLaughlin* v. *Florida*, 379 U. S. 184 (1964); *Morey* v. *Doud*, 354 U. S. 457 (1957).

State courts have applied this equal protection principle in welfare situations. See *Collins* v. *State Board of Social Welfare*, 248 Iowa 369 (1957); *Department of Mental Hygiene* v. *Kirchner*, 36 Cal. Rptr. 488 (1957). The recovery provisions do not pass this test. They single out cash assistance recipients for repayment for no reason, while

affluent citizens receive various kinds of public benefits, gratis, e.g., oil depletion allowances, transportation and farm subsidies.

The recovery provisions also pick and choose arbitrarily and without a glimmer of reasonable justification among classes of poor persons to discriminate against those most in need and least likely ever to be able to repay. Pursuant to federal statutory direction recipients of medical assistance to the indigent ("Medicaid in New York"), who, on the basis of higher financial eligibility qualifications, are in a better position to repay than cash assistance recipients, except in special circumstances are under no repayment obligation. Title XIX, Social Security Act, 42 U. S. C. A. Section 1396(a)(a)(18); Section 366, Social Services Law, Cons. Laws New York Ann. This discrimination has been severely criticized by at least one responsible public body. ("Having the Power, We Have the Duty"; Report of the Advisory Council on Public Welfare, June 1966, at p. 114.)

Finally, the recovery provisions arbitrarily exempt welfare recipients with claims under Section 33, Workmen's Compensation Law and Section 2, Volunteer Firemen's Benefits Law, Cons. Laws New York Ann., and discriminate against infants on welfare who are awarded damages for personal injuries. In addition to "windfalls," recoveries also are made from that portion of personal injury monies intended to compensate for the recipients' pain and suffering despite the fact that as in the case of appellant Whaley, such payments will never fully reimburse him for the loss of his leg.

3. *The Recovery Provisions Violate the Due Process Clause*

The State of New York arbitrarily and unreasonably deprives cash assistance recipients of property in the traditional sense, namely, realty, monetary windfalls, life insurance benefits and personal injury claims. It is true that this Court during the past three decades has been reluctant to overturn state legislation in "economic due process" cases. See *Williamson* v. *Lee Optical of Oklahoma,* 348 U. S. 483, 488 (1955); but cf. *Morey* v. *Doud, op. cit. supra,* at 468, 471, 475.

However, as conceded by the majority opinion below (R. 642) the principal consideration that guided this Court in those cases was a reluctance to interfere with state regulation of business activities. Contrary to the majority opinion, appellants contend that the principle is not applicable here where admittedly, "the primitive needs of desperate people are at stake." (R. 642.)

The recovery provisions also deprive recipients who are deterred from applying or denied benefits because they possess assets of modest valuation, of property rights in the cash benefits themselves. This form of property assumes the greatest importance and should be entitled to the utmost protection since, in our highly mechanized society, its recipients absolutely depend on such benefits for their survival. See SMITH, THE RIGHT TO LIFE (1955); Reich, *The New Property,* 73 Yale L. J. 733, 785 (1964); Smith, *Public Assistance as a Social Obligation,* 63 Harv. L. Rev. 266 (Dec. 1949).

Finally, and perhaps most important, the recovery provisions deprive recipients of the liberty or freedom, within the meaning of the Due Process Clause, to become inde-

pendent and self-supporting. The provisions *inter alia* deter needy applicants from applying, prevent welfare mothers from remarrying, deprive children of father figures. The assets assigned in this case could be put to better use, compatible with the statutory purposes of cash assistance, by setting up appellant Whaley in his own business, by providing appellant Marley with a reasonable monetary reserve for burial purposes, and by contributing to the education expenses of the children of appellants Ramos, Malave and Snell. See dissent by Judge Kaufman, *Appendix infra* at p. 44; *Griswold* v. *Connecticut*, 381 U. S. 479, 498 (1965); *Bolling* v. *Sharpe*, 347 U. S. 497 (1954); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923); *Wall* v. *King*, 206 F. 2d 878, 882 (1st Cir., 1953); Reich, *The New Property*, *op. cit. supra*, at 742.

CONCLUSION

For the reasons stated above, a substantial question under the Constitution is presented in this case, and jurisdiction should be noted.

Respectfully submitted,

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June, 1968

APPENDIX A

Judgment of the United States District Court, Southern District of New York

The defendants having brought on a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment and said motion having come on to be heard before the Honorable Marvin E. Frankel, the Honorable Irving R. Kaufman, and the Honorable Charles M. Metzner, and the Court thereafter on February 29, 1968 having handed down its decision granting said motion, it is

ORDERED, ADJUDGED, AND DECREED that the defendant, George K. Wyman, as Commissioner, New York State Department of Social Services has judgment against the plaintiffs, Geraldine Spell, Miriam Ramos, Juan Malave, Helen Markey and Robert Whaley dismissing the action.

Dated: New York, New York,
March 14, 1968.

IRVING R. KAUFMAN,
Circuit Judge.

MARVIN E. FRANKEL,
District Judge.

CHARLES M. METZNER,
District Judge.

APPENDICES